

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

OMEGA APPAREL INCORPORATED,)
)
Plaintiff,)
)
v.) No. 2:11-0031
)
) Judge Sharp
ABF FREIGHT SYSTEM, INC.)
)
Defendant.)

ORDER

In this case involving the shipment of 15,478 yards of wool cloth, Plaintiff has brought a three-count Complaint against Defendant alleging that, while in Defendant's possession, custody and control, the wool sustained substantial water damages, rendering it worthless and unsalvageable. Defendant now moves to dismiss Counts 1 and 2 of the Complaint which allege breach of contract and negligence, arguing that both claims are preempted by the Carmack Amendment, 49 U.S.C. § 14706, because the cloth was shipped in interstate commerce pursuant to a Straight Bill of Lading. Plaintiff admits that its state law claims are preempted by the Carmack Amendment (Docket No. 13).

Accordingly, Defendant's Motion to Dismiss (Docket Entry No. 9) is hereby GRANTED, and Plaintiff's claims for breach of contract and negligence as set forth in Counts 1 and 2 of the Complaint are hereby DISMISSED WITH PREJUDICE. This case will proceed against Defendant solely on Plaintiff's claim under the Carmack Amendment, as set forth in Count 3 of the Complaint.

It is SO ORDERED.

Kevin H. Sharp
KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE